

AMENDED IN ASSEMBLY APRIL 3, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2141

Introduced by Assembly Member Firebaugh

February 20, 2002

An act to amend Section 25358.7 of, and to add Section 25261.5 to, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2141, as amended, Firebaugh. Hazardous materials.

(1) ~~Under existing law, the Site Designation Committee in the California Environmental Protection Agency is authorized to designate an administering agency for oversight of a remedial action to a hazardous materials release site, which may be the Department of Toxic Substances Control, a California regional water quality control board, the Department of Fish and Game, or a local agency, depending upon the nature of the site. Existing law requires the administering agency to supervise the site investigation and remedial action conducted by the responsible party.~~

~~This bill would require the Cal-EPA to adopt a format and procedure to create a unified database and would require the agencies that may be designated as an administering agency to submit to the Cal-EPA specified information regarding any known hazardous material release sites with soil contamination above background levels, as defined. The bill would impose a state-mandated local program by requiring local agencies to submit specified information to the Cal-EPA. The bill would require the Cal-EPA to compile and maintain a list of all those hazardous materials release sites and would prohibit any person from~~

~~moving any soil at a site that is listed unless the person conducts a preliminary endangerment assessment, as specified. The bill would authorize the Department of Toxic Substances Control to issue a complaint pursuant to a specified enforcement procedure against a person violating that prohibition.~~

~~(2) The Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for a response action under the act. The act requires the department and the California regional water quality control boards to provide specified information to the affected community and to develop a public participation work plan with regard to a response action at a *listed* site subject to that act.~~

~~This bill would additionally include, in the public participation procedures of the Carpenter-Presley-Tanner Hazardous Substance Account Act, a site that is the subject to a corrective action order issued pursuant to the hazardous waste control laws, a site that is the subject of a specified enforceable agreement under that Hazardous Substance Account Act, a site that is subject to a notice under the California Land Environmental Restoration and Reuse Act, and a site that is subject to a cleanup or abatement order issued under the Porter-Cologne Water Quality Control Act.~~

~~(3) —~~

~~(2) The bill would require the State Water Resources Control Board, by July 1, 2003, to submit a report to the Legislature listing each site that has been the subject of an enforcement action pursuant to Porter-Cologne Water Quality Control Act, is contaminated with hazardous substances, and for which the state board or a regional board has issued a determination that the site is closed.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,~~



reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25261.5 is added to the Health and~~
2 ~~Safety Code, to read:~~

3 ~~25261.5. (a) The following definitions apply to this section:~~

4 ~~(1) "Background level" means the level of concentration or~~
5 ~~indicator parameter in soil that is not, and has not, been affected~~
6 ~~by any hazardous material.~~

7 ~~(2) "Preliminary endangerment assessment" has the same~~
8 ~~meaning as defined in Section 25319.5.~~

9 ~~(b) The California Environmental Protection Agency shall~~
10 ~~adopt a format and procedure to create a unified database. The four~~
11 ~~agencies that may be designated as an administering agency~~
12 ~~pursuant to paragraph (2) of subdivision (c) of Section 25262 shall~~
13 ~~submit to the California Environmental Protection Agency all~~
14 ~~information of every known hazardous materials release site~~
15 ~~subject to each agency's jurisdiction that has soil contamination~~
16 ~~above background levels.~~

17 ~~(c) Using the information provided pursuant to subdivision (b),~~
18 ~~the California Environmental Protection Agency shall compile~~
19 ~~and maintain a list of all known hazardous materials release sites~~
20 ~~with soil contamination above background levels.~~

21 ~~(d) No person may move soil at a site that is on the list compiled~~
22 ~~and maintained under subdivision (c) unless the person first~~
23 ~~conducts a preliminary endangerment assessment at the site.~~

24 ~~(e) Any person who violates subdivision (d) shall be subject to~~
25 ~~a civil penalty of not more than twenty-five thousand dollars~~
26 ~~(\$25,000) for each day of noncompliance. The procedural~~
27 ~~provisions of Section 25359.3 shall be followed by the department~~
28 ~~in enforcement actions against a person for violating subdivision~~
29 ~~(d).~~

30 ~~SEC. 2.~~

31 ~~SECTION 1. Section 25358.7 of the Health and Safety Code~~
32 ~~is amended to read:~~

1 25358.7. (a) (1) The following definitions apply to this
2 section:

3 (A) “Site” means any of the following:

4 (i) A site listed pursuant to Section 25356.

5 (ii) An area, location, or facility that is the subject of a
6 corrective action order issued pursuant to Section 25187.

7 (iii) A site that is the subject of an enforceable agreement
8 entered into pursuant to subparagraph (C) of paragraph (1) of
9 subdivision (a) of Section 25355.5.

10 (iv) An area, location, or facility that is subject to Chapter 6.10
11 (commencing with Section 25401).

12 (v) An area, location, or facility that is subject to an order issued
13 pursuant to Section 13304 of the Water Code regarding a
14 hazardous substance, as defined in subdivision (p) of Section
15 13050 of the Water Code.

16 (B) “Action” means a response action, a corrective action
17 order issued pursuant to Section 25187, a notice issued pursuant
18 to Section 25401.5, or an enforcement action taken pursuant to
19 Chapter 5 (commencing with Section 13300) of Division 7 of the
20 Water Code.

21 (2) The department or the regional board, as appropriate, shall
22 take the actions specified in this section to provide an opportunity
23 for meaningful public participation in actions undertaken for a
24 site.

25 (b) The department, or the regional board, as appropriate, shall
26 inform the public, and in particular, persons living in close
27 proximity to a site of the existence of the site and the department’s
28 or regional board’s intention to conduct an action at the site, and
29 shall conduct a baseline community survey to determine the level
30 of public interest and desire for involvement in the department’s
31 or regional board’s activities, and to solicit concerns and
32 information regarding the site from the affected community.
33 Based on the results of the baseline survey, the department or
34 regional board shall develop a public participation plan that shall
35 establish appropriate communication and outreach measures
36 commensurate with the level of interest expressed by survey
37 respondents. The public participation plan shall be updated as
38 necessary to reflect any significant changes in the degree of public
39 interest as the site investigation and cleanup process moves toward
40 completion.

1 (c) The department or regional board shall provide any person
2 affected by an action undertaken for any site with the opportunity
3 to participate in the department's or regional board's
4 decisionmaking process regarding that action by taking all of the
5 following actions:

6 (1) Provide access to information which the department or
7 regional board is required to release pursuant to the California
8 Public Records Act (Chapter 3.5 (commencing with Section 6250)
9 of Division 7 of Title 1 of the Government Code), relating to the
10 action, except for the following:

11 (A) Trade secrets, as defined in subdivision (a) of Section
12 25358.2.

13 (B) Business financial data and information, as specified in
14 subdivision (c) of Section 25358.6.

15 (C) Information that the department or regional board is
16 prohibited from releasing pursuant to any state or federal law.

17 (2) Provide factsheets, based on the expressed level of public
18 interest, regarding plans to conduct the major elements of the site
19 investigation and response actions. The factsheets shall present the
20 relevant information in nontechnical language and shall be
21 detailed enough to provide interested persons with a good
22 understanding of the planned activities. The factsheets shall be
23 made available in languages other than English if appropriate.

24 (3) Provide notification, upon request, of any public meetings
25 held by the department or regional board concerning the action.

26 (4) Provide the opportunity to attend and to participate at those
27 public meetings.

28 (5) Based on the results of the baseline community survey,
29 provide opportunities for public involvement at key stages of the
30 response action process, including the health risk assessment, the
31 preliminary assessment, the site inspection, the remedial
32 investigation, and the feasibility study stages of the process. If the
33 department or regional board determines that public meetings or
34 other opportunities for public comment are not appropriate at any
35 of the stages listed in this section, the department or regional board
36 shall provide notice of that decision to the affected community.

37 (d) The department or regional board shall develop and make
38 available to the public a schedule of activities for each site for
39 which action is expected to be taken by the department or regional
40 board and shall make available to the public any plan provided to

1 the department or regional board by any responsible party, unless
2 the department is prohibited from releasing the information
3 pursuant to any state or federal law.

4 (e) In making decisions regarding the methods to be used for
5 an action, the department or regional board shall incorporate or
6 respond in writing to the advice of persons affected by the action.

7 (f) This section does not apply to emergency actions taken
8 pursuant to Section 25354.

9 (g) With regard to a site for which a notice is issued pursuant
10 to Section 25401.5, the requirements of this section are in addition
11 to the community participation requirements of Section 25401.8.

12 ~~SEC. 3.~~

13 *SEC. 2.* On or before July 1, 2003, the State Water Resources
14 Control Board shall submit a report to the Legislature listing each
15 site that has been the subject of an enforcement action pursuant to
16 Chapter 5 (commencing with Section 13300) of Division 7 of the
17 Water Code, that has soil or groundwater contamination from a
18 hazardous substance, as defined in subdivision (p) of Section
19 13050 of the Water Code and for which the State Water Resources
20 Control Board or a California regional water quality control board
21 has issued a determination that the site is closed. The report shall
22 include information as to whether each site is being monitored.

23 ~~SEC. 4. Notwithstanding Section 17610 of the Government~~
24 ~~Code, if the Commission on State Mandates determines that this~~
25 ~~act contains costs mandated by the state, reimbursement to local~~
26 ~~agencies and school districts for those costs shall be made pursuant~~
27 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
28 ~~2 of the Government Code. If the statewide cost of the claim for~~
29 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
30 ~~reimbursement shall be made from the State Mandates Claims~~
31 ~~Fund.~~